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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-216835 **DATE:** February 22, 1985

MATTER OF: William L. Klockenteger - Real Estate Expenses - Title Requirements

DIGEST:

A transferred employee was reimbursed for only 50 percent of his claimed real estate expenses because he was divorced from his wife, with whom he held title to the residence, prior to the date of settlement. The employee contends that the date to be used to determine eligibility for reimbursement of such expenses is when the employee is notified of his impending transfer. The settlement date is the appropriate time to determine if an individual with whom an employee holds title is a member of his immediate family. Therefore, the employee may be reimbursed for only one-half of the otherwise allowable expenses.

This decision is in response to a request from Mr. Richard Martinez, an authorized certifying officer with the Federal Highway Administration (FHA), for our decision concerning the entitlement of Mr. William L. Klockenteger to reimbursement of expenses associated with the sale of his residence at his former duty station. We concur in the FHA's determination to reimburse Mr. Klockenteger for only 50 percent of the expenses he incurred.

On January 24, 1984, Mr. Klockenteger was notified of his transfer from Washington, D.C., to Denver, Colorado, and it was determined that he would report for duty on March 12, 1984. Upon notification of his transfer Mr. Klockenteger put his residence on the market. He accepted a contract for the sale of the house on March 27, 1984, and settlement took place on May 25, 1984. Prior to the settlement, on April 6, 1984, Mr. Klockenteger obtained a divorce.

The FHA found that since Mr. Klockenteger held title to the residence with his ex-wife at the time of settlement, he did not satisfy the requirements of paragraph

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2-6.1c of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), which provide that, as a prerequisite for reimbursement of real estate expenses, title to the residence must be in the name of the employee alone, in the joint names of the employee and one or more members of his immediate family, or solely in the name of one or more members of his immediate family. The FHA reimbursed Mr. Klockenteger for one-half of the expenses in accord with our decisions which provide that when an employee holds title to a residence with an individual who is not a member of his immediate family, he may be reimbursed only to the extent of his interest in the residence. See Charles R. Holland, B-205891, July 19, 1982; Gerald S. Beasley, B-196208, February 28, 1980.

Mr. Klockenteger contends that the date to be used to determine eligibility for reimbursement of real estate expenses is not the date of sale, but the date on which the employee is notified of his transfer coupled with the date he contracts with a realtor to sell his house. Mr. Klockenteger claims that since his family was intact on those dates and at the time of transfer, he is entitled to full reimbursement.

Immediate family is defined in FTR paragraph 2-1.4d as including:

> "(1) Any of the following named members of the employee's household at the time he/she reports for duty at the new permanent duty station or performs authorized or approved overseas tour renewal agreement travel or separation travel:
>
> "(a) Spouse;"

This definition seems to support Mr. Klockenteger's argument concerning the point of eligibility for reimbursement of real estate expenses. However, we held in our decision of today, Alan Wood, B-216206, that since an employee may be reimbursed only for those expenses he is required to pay and since the expenses of a real estate transaction are generally paid at settlement, that date is the appropriate date to use to determine whether the individual with whom an employee holds title is a member of his immediate family.

In accord with the rule enunciated in Wood, we concur in FHA's decision that Mr. Klockenteger is entitled only to reimbursement of 50 percent of the claimed expenses. We would like to point out, however, that even if we were to accept Mr. Klockenteger's view of the appropriate date for eligibility, he would not be entitled to full reimbursement. The record contains a copy of the Klockentegers' divorce decree, dated April 6, 1984, which states that:

> "* * * the parties hereto have lived separate and apart without cohabitation and without interruption since on or about November 18, 1982; which separation has been continuous and uninterrupted and without cohabitation for a period of more than one (1) year; that there has been no reconciliation of any kind between the parties nor is one possible; * * *"

The Klockentegers were apparently separated well before Mr. Klockenteger's transfer and even before he was notified of that transfer. We have held that since a separated spouse is not a member of an employee's household, such a spouse does not fall within the definition of immediate family. See William A. Cromer, B-205869, June 8, 1982, and cases cited therein.

Milton J. Socolar

Acting Comptroller General
of the United States